

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KATHRYN A. ADAMS

Claimant

VS.

DILLARDS

Respondent

AND

ACE FIRE UNDERWRITERS INS. CO.

Insurance Carrier

Docket No. 1,016,547

ORDER

Respondent and its insurance carrier (respondent) request review of the June 9, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Thomas Klein.

ISSUES

The ALJ ordered respondent to pay claimant's various medical bills and to pay for claimant to have massage therapy as unauthorized medical treatment up to the statutory maximum of \$500. The ALJ however denied payment of claimant's medical bills for "a bacterial culture and potential infection" because claimant did not provide a causal link between her accident and that condition.¹

The respondent appealed this preliminary hearing Order alleging the ALJ exceeded his jurisdiction in ordering it to provide massage therapy. Respondent maintains that the treatments claimant has received and desires to continue are not covered as medical treatment under the Kansas Workers Compensation Act (Act). Thus, respondent contends that portion of the ALJ's preliminary hearing Order should be reversed and set aside.

Claimant argues that the Board does not have jurisdiction to review a preliminary order regarding medical treatment. And assuming the Board does have jurisdiction, the ALJ appropriately granted claimant's request. Although massage therapy is not mentioned as medical treatment in the statute it is a common treatment for many surgical and non

¹ ALJ Order (Jun. 9, 2005).

surgical injuries. Thus, claimant's request is proper and the ALJ's decision should be affirmed.

The issues to be addressed in this appeal are 1) whether the Board has jurisdiction over this dispute; and 2) whether the ALJ exceeded his jurisdiction in granting claimant's request for massage therapy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant apparently sustained a compensable injury for which she was receiving medical treatment, including surgery and post surgical physical therapy. According to claimant, she was receiving physical therapy treatments from Tammy Roberts at a facility referred to as Via Christi. Claimant testified that Ms. Roberts suggested claimant be seen by a massage therapist, Sheila Sturgeon, also at Via Christi. Claimant had several massage treatments with Ms. Sturgeon, but claimant says that she was unable to get in on certain days as she required. So she sought massage treatments elsewhere.

Claimant concedes she has no written referrals to either Ms. Sturgeon or any of the other massage providers. Rather, she contends she was in significant pain and required immediate treatment which Ms. Sturgeon could not provide.

The ALJ granted claimant's request, ordering her massage therapy bills to be paid as unauthorized medical and for respondent to continue to pay such bills, up until such time as the unauthorized medical allowance is exhausted. It is this portion of the preliminary hearing Order that is in dispute. Respondent contends massage therapy is not medical treatment and that the ALJ exceeded his jurisdiction in ordering respondent to pay such bills. Claimant argues that the Board has no jurisdiction to review the ALJ's Order at this juncture. And even if jurisdiction is present, the ALJ correctly concluded that massage therapy does constitute medical treatment under the Act.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.²

None of the jurisdictional criteria listed in K.S.A. 44-534a are involved in this appeal. In this instance, the only basis for appeal is respondent's contention that the ALJ exceeded his jurisdiction. The Board has considered this issue and concludes that the ALJ did not exceed his jurisdiction in ordering respondent to pay for massage therapy as unauthorized medical.

The focus of respondent's argument is essentially that claimant has failed to prove that the massage therapy she received is "reasonably necessary to cure or relieve the effects of her work injury."³ While it may have been less than prudent for claimant to press ahead and obtain massage therapy from providers who are not normally involved in the rehabilitation process, there are occasions where massage therapy is recognized as a valid means of treating patients. The Board and some ALJs have, in the past, granted such requests.⁴ Normally, this is done in connection with a specific referral from a physician, something that is lacking here. Nonetheless, it is the ALJ's prerogative to award medical treatment at a preliminary hearing and the Board finds that he did not exceed his jurisdiction in this instance. Accordingly, the Board has no jurisdiction to consider this matter.

When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.⁵ Accordingly, respondent and carrier's appeal is dismissed.

WHEREFORE, it is the finding, decision and order of the Board that the respondent's appeal of the preliminary hearing Order of Administrative Law Judge Thomas Klein dated June 9, 2005, is dismissed.

² See K.S.A. 44-551(b)(2)(A).

³ Respondent's Brief at 6 (filed Jun. 29, 2005).

⁴ See e.g. *Osborn v. Electric Corp. of Kansas City*, No. 166,784, 1996 WL 46450 (WCAB Jan. 24, 1996); *Brazzle v. Russell Stover Candies*, No. 1,004,690, 2004 WL 3089863, (WCAB Nov. 10, 2004).

⁵ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

IT IS SO ORDERED.

Dated this _____ day of July, 2005.

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director